



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1995

Ms. Tiffany L. Haertling  
Hayes, Coffey & Berry  
101 South Locust, Suite 601  
Denton, Texas 76201

OR95-013

Dear Ms. Haertling:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27171.

You represent the City of Aubrey (the "city"), which received an open records request for a copy of an audit performed for the city and for records relating to that audit. The requestor has asked for:

1. A copy of the audit;
2. A copy of the ordinance, resolution, or letter in which the audit was transmitted to the Denton County District Attorney
3. A copy of the transcript regarding the proceedings of the council in which the audit was discussed.

The city has submitted to this office for review a copy of the audit. You contend that the audit and a tape recording responsive to the request are excepted from disclosure pursuant to sections 552.002 and 552.103 of the Government Code. The city apparently has a tape recording of the city council meeting in which the audit was reviewed, but you state that because the recording is of an executive session the tape is excepted from disclosure under section 551.104 of the Government Code. Since no ordinance, resolution, or letter to the Denton County District Attorney's Office (the "district attorney") was submitted to this office, we assume that either the city has no such documents or that responsive documents have already been released to the requestor. We will address your arguments concerning the audit and the tape recording.

Section 552.002 defines a "public record" as "the portion of a document, writing, letter, memorandum or other written, printed, typed, copied, or developed material that contains public information." Public information is information that, under a law, ordinance, or in connection with official business has been collected, assembled or maintained (1) by a governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.021(a). Chapter 552 also specifically provides that completed audits made of, for, or by a governmental body are public information. *Id.* § 552.022(1); *see also* Open Records Decision No. 344 (1982) at 4-5 (information from an audit still in progress is also public information). The audit and the tape recording are subject to Chapter 552 of the Government Code and must be released unless expressly provided otherwise under the chapter. Gov't Code § 552.006.

Information that is considered confidential by law is excepted from public disclosure under Chapter 552. *Id.* § 552.101. You state that the audit was reviewed in a closed executive session of the city council held pursuant to section 551.071 of the Government Code, which provides that a governmental body may hold a closed meeting to consult with its attorney in certain situations. The tape recording of a closed meeting is available for public inspection and copying pursuant only to court order. *Id.* § 551.104. It is a criminal offense to disclose to the public a tape recording of a lawfully closed meeting. Gov't Code § 551.146.

Since the tape recording of a lawfully closed meeting is considered confidential by law, the meeting tape at issue must be withheld from disclosure and released only in accordance with the provisions of section 551.104. Although the tape recording of the meeting in which the audit was discussed is excepted from disclosure, the audit is not made confidential simply because it was discussed during a closed city council meeting. Open Records Decision Nos. 485 (1987) at 9-10; 605 (1992). We will address your argument that the audit is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city has met its burden of demonstrating that litigation is reasonably anticipated. Open Records Decision No. 289 (1981). Our review of the audit shows it is related to the anticipated litigation. Therefore, the city may withhold the audit from disclosure under section 552.103(a).<sup>1</sup> We note that it is within the city's discretion to release the audit.

---

<sup>1</sup>In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4. Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/LRD/rho

Ref.: ID# 27171

Enclosures: Submitted documents

cc: Mr. Max Wiesen  
P.O. Box 857  
Denton, Texas 76202  
(w/o enclosures)